

OPINION
45-232

October 24, 1945 (OPINION)

PUBLIC PLACE

RE: Highways

Re: Section 5-0109 North Dakota

Revised Code of 1943

We have your letter of October 23, desiring our opinion as to whether or not a "public place" within the provisions of section 5-0109 of the North Dakota Revised Code of 1943 includes a public highway; that is, whether or not, a person being intoxicated on a public highway in this state is subject to punishment under that section.

Alabama has held that a public road is a "public place" within the statute concerning drunkenness. *Frederick v. State*, 24 Ala. App. 569, 138 So. 426. Indiana has held that a "public place" as used in act of 1875, section 11, providing for the punishment of any person found in a public place in a state of intoxication, is a place where all persons are entitled to be. A public street, highway, or sidewalk is a "public place" within the meaning of the statute. *State v. Waggoner*, 52 Ind. 481-482; *State v. Moriarty*, 74 Ind. 103-105.

Under these authorities, it is our opinion that a person found intoxicated upon any of the highways of this state is guilty of a misdemeanor and is punishable by fine and imprisonment under section 5-0109.

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